

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Qwest Petition for Declaratory Ruling)	WC Docket No. 02-77
Concerning Wholesale DSL Services and)	
Section 251(c)(4) of the Act)	
)	

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its comments on the Qwest Corporation (Qwest) Petition for Declaratory Ruling in the above-captioned proceeding. In its petition, Qwest seeks a declaratory ruling that “bulk” DSL services provided to an Internet Service Provider (ISP) fall outside the scope of the Section 251(c)(4) “retail minus avoided cost” resale pricing obligation even when the incumbent LEC serves as a billing, collection, and marketing agent for the unaffiliated ISP. Qwest asserts that Section 51.605(c) of the Commission’s rules and the AOL Bulk Services Order¹ preclude the imposition of Section 251(c)(4) resale obligations on “bulk” DSL services provided to ISPs under any circumstance.

The Commission should deny Qwest’s petition for declaratory ruling because Section 51.605(c) of the Commission’s rules and the AOL Bulk Services Order do not address arrangements such as the Qwest/MSN relationship. The AOL Bulk Services Order

¹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Second Report and Order, 14 FCC Rcd 19237 (1999) (AOL Bulk Services Order).

expressly assumed that the ILEC would not be providing any retail functions to the “ultimate end user” customer.² Indeed, the Commission stated in the AOL Bulk Services Order that “[a]ny Internet Service Provider that purchases a bulk DSL service must itself, rather than the incumbent, provide these typical retail services to the ultimate consumer.”³

If the ILEC is providing retail functions in conjunction with a bulk DSL service, even on an “off-tariff” basis, one of the key findings underlying the AOL Bulk Services Order’s conclusion may not be valid. In the AOL Bulk Services Order, the Commission exempted bulk offerings provided as inputs to ISP retail services from the Section 251(c)(4) wholesale discount because, the Commission found, such offerings “would not involve an appreciable level of avoided costs.”⁴ But when an ILEC is providing retail functions in conjunction with its bulk DSL offering, the Commission cannot readily establish whether the “retail” costs are recovered through the tariffed bulk DSL rate, the ILEC’s price for off-tariff retail functions, or a combination of the two. In other words, the tariffed rate for the bulk DSL offering may actually recover retail costs that would be avoided under Section 251(c)(4). At a minimum, the Commission should make clear that ILEC bulk DSL offerings fall outside of the scope of Section 251(c)(4) only if the tariffed rate for such offerings does not recover the costs of any retail functions provided by the ILEC, i.e., the price of any off-tariff retail functions provided by the ILEC to the ISP must fully recover the costs of providing those functions.

The Commission should not only deny Qwest’s petition for declaratory ruling, but should investigate whether Qwest, through the Qwest/MSN relationship, is “provid[ing]” an

² AOL Bulk Services Order at ¶¶ 15, 17.

³ Id. at ¶ 15 (emphasis added).

⁴ AOL Bulk Services Order at ¶ 17.

in-region interLATA information service in violation of Section 271(a) of the Act.⁵

Although not expressly stated in Qwest's petition, the Internet access service that Qwest is selling to its end user customers appears to include an interLATA "backbone" component.

Applying the test set forth in the Qwest Teaming Order,⁶ which looks at the "totality of [Qwest]'s involvement" in the interLATA market,⁷ it appears that Qwest is "providing" that interLATA service in violation of Section 271(a).

As an initial matter, the Qwest Teaming Order makes clear that RBOCs can market and sell the interLATA services of unaffiliated entities only "[p]rovided that the BOC would make no representation that such product or service is associated with its name or service."⁸ Contrary to that limitation, however, Qwest's website shows that Qwest has created a prohibited "association" between its name and services and the interLATA service by branding that service as "MSN Broadband Powered by Qwest."⁹

Furthermore, the Qwest/MSN relationship has many of the same characteristics as the Qwest/Ameritech relationship found unlawful in the Qwest Teaming Order. Qwest is (1) providing a range of customer care functions in conjunction with "MSN Broadband Powered by Qwest;"¹⁰ (2) acting as a marketing and sales agent exclusively for "MSN Broadband Powered by Qwest;"¹¹ and (3) receiving a "material financial benefit."¹² That material financial benefit takes two forms. First, by offering its end users an interLATA information service, Qwest gains a competitive advantage over ISPs and CLECs that cannot

⁵ 47 U.S.C. § 271(a)(1).

⁶ AT&T Corporation et al. v. Ameritech Corporation, Memorandum Opinion and Order, 13 FCC Rcd 21438 (1998) (Qwest Teaming Order).

⁷ Id. at ¶ 37.

⁸ Id. at ¶ 50.

⁹ <http://www.qwest.com/residential/products/dsl/index.html>

¹⁰ Qwest Teaming Order at ¶ 48.

¹¹ Id.

compete effectively in providing DSL-based Internet access services because Qwest has not adequately opened its local market.¹³ Second, the Starliper Affidavit attached to Qwest's Petition for Declaratory Ruling reveals that Qwest receives a "commission" of unspecified value and type from MSN.¹⁴

The material financial benefits that Qwest derives from its involvement in the interLATA market through the Qwest/MSN relationship reduce Qwest's incentive to cooperate in opening the local market to competition. As the Commission found in the Qwest Teaming Order, such a result is contrary to the objectives of Section 271 of the Act.¹⁵

For the reasons stated herein, the Commission should deny Qwest's petition for declaratory ruling and investigate whether Qwest is providing interLATA services in violation of Section 271(a).

Respectfully submitted,
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¹² Id. at ¶¶ 39-44.

¹³ See Qwest Teaming Order at ¶ 39.

¹⁴ Affidavit of Steven K. Starliper at ¶ 5.

¹⁵ Qwest Teaming Order at ¶ 37.